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10/079,258

REMARKS/ARGUMENTS

Reconsideration of this patent application is respectfully requested in view of the foregoing amendments and the following remarks.

In reply to the Claim Rejection stated in the Official Action, the applicant respectfully considers the examiner's finding to be inaccurate, and puts forward the following arguments in defense of the patentability of the claims.

In paragraph 3 of the Official Action, the examiner rejects claims 2 to 8 under 35 U.S.C. 103(a) as being unpatentable over Thorpe (US PAT. 5,276,865) in view of Bolt et al. (US PAT. 6,038,665 hereinafter Bolt).

Firstly, Thorpe does not comprise configurable control software because Thorpe does not disclose any operation apart from the copy itself that is performed by the software, so the "software required" in column 5, lines 9-10 is only the boot control file (necessary in any computer) and the backup system software and these cannot be considered "configurable control

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software" as defined in the claims, i.e. performing the steps of detecting a command, running backup software, detecting the end of the backup copies and switching off the computer. For example, in claim 13 Thorpe clearly defines what is the required software: a boot control file of the computer which is modified to include a path to a backup memory location, and a backup control file able to execute a first routine for backing up the memory of the computer and a second routine for disconnecting the computer from a power supply. The execution of each routine is controlled by the CPU of the computer, so clearly the control is performed by hardware and not by software. Also, in our invention the configurable control software is always running over the operating system in order to detect the switched-off "command" generated by the user.

On the other hand, we disagree with the examiner's view that, in Thorpe, when the user interacts with the computer, a "command" is generated for the computer to be switched-off. In the following we will support our view by showing that the "command" in Thorpe is not generated by the user and does not perform the steps claimed in claims 2 and 8.

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In column 8, lines 17-20 of Thorpe, the "command" is generated by the CPU, and not by the user's interaction with the computer, and said "command" is to begin execution of backup control file, and not to switch off the computer. Clearly, Thorpe sees as different a "signal" (e.g., note column 7, lines 17-19) and a "command" (e.g., note column 8, lines 17-20), because "signal" and "command" are used in the same context for different objects. It has to be borne in mind that in 1992, when Thorpe was filed, it was not possible to cause switching off of the computer by means of software (operating system) and such switching off by software is the only way to generate a "command" for switching off the computer. In Thorpe, when the power switch is switched to "off" (the user interacts with the computer), a "signal" is sent to the CPU (note column 7, lines 17-19). The difference between "command" and "signal" is important. A "command" is an instruction that must be executed by CPU, whereas "signal" only indicates to the CPU that an event has occurred in the computer (in this case, that the power switch has been switched to "off"). A "command" can only be generated by software, as in Windows XP, wherein when the user wants to switch off the computer, acts on the operating system (Windows Start button), which generates a

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"switch off" "command" to the CPU: CPU receives the "command" and acts on the motherboard to switch off the computer. In our invention, the "configurable control software" detects this "command" before it "reaches" the CPU and executes the "backup software", i.e. the control of switching off is performed by software. In Thorpe, the "signal" is generated by the power switch and always "reaches" the CPU, no control being possible, and triggers the execution of the "backup control file", i.e., the control of switching off is performed by hardware and a "configurable control software" or similar does not exist. Furthermore, in the claimed invention, since the configurable control software detects the switch-off "command" of the computer, the system assures that there are no open files and that, therefore, no errors take place in the moment of the execution of the backup copy. This way, the copy of all the files selected by the user can be carried out; if any of the selected files is open, the software can close it before the copy. This is impossible in Thorpe.

Consequently, Thorpe does not disclose a "configurable control software"; and In Thorpe, when the user interacts with

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the computer, a "command" is not generated for the computer to be switched off.

Furthermore, even assuming that Thorpe discloses all the features of claims 2 and 8 except for the selection of files stored in the hard drive of at least one computer, it is submitted that the combination of Thorpe with the teachings of Bolt is not obvious, as will be discussed in the following.

Mainly, it is not seen that any accurate transfer of teachings from Bolt could be achieved without rendering the arrangement of Thorpe at least partially inoperative for its intended use.

"If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. (*In re Ratti, M.P.E.P. § 2143.02.*)

In Thorpe, the selection of files is very difficult because to achieve such selection the user should modify, for example,

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script files or batch files and write an instruction or command for each file selected every time the user wanted copy a file. For this, Thorpe does not consider the possibility of selecting files and only performs the backup copy of "whole" drives. Therefore, selecting files would change the principle of operation of Thorpe.

For the reason set forth above, the combination of Thorpe and Bolt cannot be used to establish a prima facie case of obviousness. Therefore, independent claims 2 and 8 are non-obvious over the cited art. Claims 3 to 7 are therefore also non-obvious.

In summary, the claims 2 and 8 are not obvious, because the new features are not derivable by the skilled man from the teachings of Thorpe or other prior art documents and it provides advantageous technical effects.

In view of the above arguments, it is submitted that the subject matter of claim 2 and 8 are non-obvious; and that consequently dependent claims 3 to 7 are also non-obvious.

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Accordingly, it is submitted that claims 2-8 are in condition for allowance.

Applicant respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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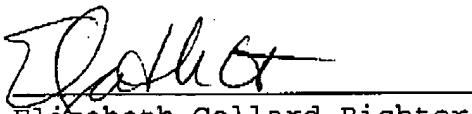
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I hereby certify that this correspondence is being sent by facsimile transmission to the U.S.P.T.O. to Patent Examiner ZHUO H. LI at Group No. 2186, to 1-703-746-7239 on October 20, 2004.


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